

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Implementation of the</b>	)	
<b>Telecommunications Act of 1996:</b>	)	
	)	
	)	
<b>Telecommunications Carriers' Use of</b>	)	<b>CC Docket No. 96-115</b>
<b>Customer Proprietary Network</b>	)	
<b>Information And Other Customer</b>	)	
<b>Information;</b>	)	
	)	
<b>Implementation of the Non-Accounting</b>	)	<b>CC Docket No. 96-149</b>
<b>Safeguards of Sections 271 and 272 of the</b>	)	
<b>Communications Act of 1934, As</b>	)	
<b>Amended</b>	)	
	)	
<b>2000 Biennial Regulatory Review –</b>	)	<b>CC Docket No. 00-257</b>
<b>Review of Policies and Rules Concerning</b>	)	
<b>Unauthorized Changes of Consumers'</b>	)	
<b>Long Distance Carriers</b>	)	

**THE ARIZONA CORPORATION COMMISSION'S  
PETITION FOR CLARIFICATION AND/OR RECONSIDERATION**

On July 25, 2002, the Federal Communications Commission ("FCC") released its Third Report and Order<sup>1</sup> in the above-captioned Dockets. In its Third Report and Order, the FCC resolved several issues in connection with carriers' use of customer proprietary network information ("CPNI") pursuant to section 222 of 1996 Act. More specifically, the FCC adopted an approach that it believes comports with the decision of the United States Court of Appeals for the Tenth Circuit which vacated the FCC's

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<sup>1</sup> In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-149, Third Report and Order and Third Further Notice of Proposed Rulemaking, FCC 93-27 (rel. Feb. 26, '1998)(Third Report and Order).

requirement that carriers obtain express customer consent for all sharing of CPNI between a carrier and its affiliates, and unaffiliated entities. Pursuant to Section 1.429 of the FCC's Rules, the Arizona Corporation Commission ("ACC") hereby requests that the FCC clarify and/or reconsider its Third Report and Order in this proceeding, in the one respect described below.

The ACC supports the FCC's decision to allow States to adopt more stringent approval requirements than those adopted by the FCC. In doing so, the FCC acknowledged that States may develop different records should they choose to examine the use of CPNI for intrastate services, and may find further evidence of harm, or less evidence of burden on protected speech interests. Accordingly, the FCC has chosen not to apply an automatic presumption that more stringent State rules will be preempted. The ACC supports this change in policy on the FCC's part and concurs with the FCC that it is appropriate given the FCC's new rules which permit carriers to use an "opt-out" approval mechanism in some instances.

The ACC is concerned that the FCC has gone too far, however, in allowing for disclosure of CPNI to any unrelated third-parties, even under an "opt-in" regime. Section 222(c)(2) requires express written authorization by a customer before a carrier may disclose CPNI to a third party. That Section provides:

(2) DISCLOSURE ON REQUEST BY CUSTOMERS – a telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

Customer approval under Section 222(c)(1) requires at a minimum that the customer's consent be knowing and informed. It would be difficult, if not impossible, to adequately inform the customer of all of the potential disclosures that could occur under a policy which allowed disclosure to any unrelated third-party. Without adequate information about who is to receive his/her CPNI in the future and for what purpose, the customer cannot be said to make a knowing and informed decision about its release.

Notice to the customer can adequately identify instances where there is a legitimate business relationship between the customer and the third-party, such as in the case of an agent acting on behalf of the telecommunications carrier, or where the customer has selected a new telecommunications provider, so that the customer is adequately informed to whom his CPNI is going to be released and for what purpose. Beyond these types of disclosures to third-parties, the ACC is concerned that a customer's consent (under either opt-out or opt-in) may not be either knowing or informed. A customer has a right under the provisions of 47 U.S.C. Section 222 to know who will receive his or her proprietary account information and for what purpose.

The FCC's approach in its Third Report and Order appears to create a situation where once having given opt-in consent, the consumer has no knowledge of who will receive his or her proprietary information. The ACC is concerned that such a situation leaves the door open for inappropriate, unknown, harmful, and unexpected disclosure of CPNI. The ACC understands that in Arizona, telecommunications carriers do not release CPNI, especially calling patterns or information to any unrelated third parties not providing telecommunications services. The ACC believes that this important protection must be maintained.

In summary, allowing for unlimited release of CPNI to any unrelated third parties, even under an "opt-in" policy, is overly broad given the express wording of Section 222(c)(2). The FCC should clarify and/or reconsider its policies in this regard to ensure that no unintended or inappropriate disclosures of private customer account information occur.

## **CONCLUSION**

For the foregoing reasons, the Commission should reconsider and clarify its Third Report and Order in this Docket as set forth above.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of October, 2002.

/s/ Maureen A. Scott

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 21<sup>st</sup> day of October, 2002, served all parties to this action with a copy of the foregoing PETITION FOR CLARIFICATION AND/OR RECONSIDERATION by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

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/s/ Maureen A. Scott

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Maureen A. Scott